

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

RUSSELL SCOTT WHISENHUNT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05-CV-1828-RDP-HGD
)	
TERRY SURLES, et al.,)	
)	
Defendants.)	

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on March 28, 2007, recommending that Defendants Marcum's and Surles' motion for summary judgment be granted and the court move, *sua sponte*, for summary judgment on Plaintiff's Eighth Amendment medical care claim against Defendant Frondof and this cause be dismissed with prejudice. No objections have been filed by any party.

The court finds that Marcum's and Surles' motions are due to be granted. The court also finds that its *sua sponte* motion for summary judgment on Plaintiff's claim against Defendant Frondof is due to be granted because, despite receiving notice of the magistrate judge's report, Plaintiff has failed to present any substantial evidence of an essential element of his Eighth Amendment medical care claim, namely that Frondof was

deliberately indifferent to Plaintiff's serious medical needs. Therefore, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and his recommendation is **ACCEPTED**. The court **EXPRESSLY FINDS** that there are no genuine issues of material fact and that Defendants are entitled to judgment as a matter of law. Accordingly, Defendants Marcum's and Surles' motion for summary judgment, along with the court's *sua sponte* motion for summary judgment on Plaintiff's Eighth Amendment claim against Defendant Frondof, are due to be granted and this action is due to be dismissed with prejudice. A Final Judgment will be entered.

DONE and **ORDERED** this 11th day of May, 2007.

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE